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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

**[Docket Nos. 120328229-4949-02 and 180117042-8884-02; RTID 0648-XT032]**

**Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; Purse Seine category annual quota adjustment; quota transfer.

**SUMMARY:** NMFS is adjusting the Atlantic bluefin tuna (BFT) Purse Seine and Reserve category quotas for 2020, as it has done annually since 2015. NMFS also is transferring 51 metric tons (mt) of BFT quota from the Reserve category to the General category January 2020 period (from January 1 through March 31, 2020, or until the available subquota for this period is reached, whichever comes first). The transfer to the General category is based on consideration of the regulatory determination criteria regarding inseason adjustments and applies to Atlantic tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat category permitted vessels with a commercial sale endorsement when fishing commercially for BFT.

**DATES:** Effective February 5, 2020, through December 31, 2020.

**FOR FURTHER INFORMATION CONTACT:** Sarah McLaughlin, 978-281-9260, Nicholas Velseboer 978-675-2168, or Larry Redd, 301-427-8503.

**SUPPLEMENTARY INFORMATION:** Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006), and amendments. NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

**Annual Adjustment of the BFT Purse Seine and Reserve Category Quotas**

The current baseline Purse Seine, General, and Reserve category quotas are codified as 219.5 mt, 555.7 mt, and 29.5 mt, respectively. Pursuant to § 635.27(a)(4), NMFS has determined the amount of quota available to the Atlantic Tunas Purse Seine category participants in 2020, based on their BFT catch (landings and dead discards) in 2019. In accordance with the regulations, NMFS makes available to each Purse Seine category participant either 100 percent, 75 percent, 50 percent, or 25 percent of the individual baseline quota allocations based on the previous year's catch, as described in § 635.27(a)(4)(ii), and reallocates the remainder to the Reserve category. NMFS has

calculated the amounts of quota available to the Purse Seine category participants for 2020 based on their individual catch levels in 2019 and the codified process adopted in Amendment 7. NMFS did not open the Purse Seine fishery in 2019 because there were no purse seine vessels permitted to fish for BFT and thus no catch in 2019. As a result, each Purse Seine category participant will receive 25 percent of the individual baseline quota amount, which is the required distribution even with no fishing activity under the current regulations. The individual baseline amount is 43.9 mt (219.5 mt divided by five Purse Seine category participants), 25 percent of which is 11 mt. Consistent with § 635.27(a)(4)(v)(C), NMFS notifies Atlantic Tunas Purse Seine category participants of the amount of quota available for their use this year through the Individual Bluefin Quota electronic system established under § 635.15 and in writing.

By summing the individual available allocations, NMFS has determined that 55 mt are available to the Purse Seine category for 2020. Thus, the amount of Purse Seine category quota to be reallocated to the Reserve category is 164.5 mt (219.5 mt - 55 mt). This reallocation results in an adjusted 2020 Reserve category quota of 194 mt, before any further transfers to other categories.

#### **Transfer of 51 mt from the Reserve category to the General category**

Under § 635.27(a)(9), NMFS has the authority to transfer quota among fishing categories or subcategories after considering regulatory determination criteria at § 635.27(a)(8). For 2020 to date, NMFS has transferred 19.5 mt from the General category December 2020 subquota period to the January 2020 subquota period (85 FR

17, January 2, 2020), resulting in an adjusted General category January period subquota of 49 mt.

NMFS has considered all of the relevant determination criteria and their applicability to the inseason quota transfer. These considerations include, but are not limited to, the following:

Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock (§ 635.27(a)(8)(i)), biological samples collected from BFT landed by General category fishermen and provided by BFT dealers continue to provide NMFS with valuable data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Additional opportunity to land BFT over the longest time-period allowable would support the continued collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS also considered the catches of the General category quota to date (including during the winter fishery in the last several years), and the likelihood of closure of that segment of the fishery if no adjustment is made (§ 635.27(a)(8)(ii) and (ix)). As of January 28, 2020, the General category has landed 14.9 mt of its adjusted January 2020 subquota of 49 mt. Commercial-size BFT are currently readily available to vessels fishing under the General category quota. Without a quota transfer at this time, General category participants would have to stop BFT fishing activities with very short notice, while commercial-sized BFT remain available in the areas General category permitted vessels operate. Transferring 51 mt of BFT quota from the Reserve category

would result in a total of 100 mt being available for the General category for the January 2020 subquota period.

Regarding the projected ability of the vessels fishing under the particular category quota (here, the General category) to harvest the additional amount of BFT quota transferred before the end of the fishing year (§ 635.27(a)(8)(iii)), NMFS considered General category landings over the last several years and landings to date this year. Landings are highly variable and depend on access to commercial-sized BFT and fishing conditions, among other factors. NMFS anticipates that all 51 mt of transferred quota will be used by March 31. In the unlikely event that any of this quota is unused by March 31, the unused quota will roll forward to the next subperiod within the calendar year (*i.e.*, the June through August time period), and NMFS anticipates that it would be used by the subquota category before the end of the fishing year.

NMFS also considered the estimated amounts by which quotas for other gear categories of the fishery might be exceeded (§ 635.27(a)(8)(iv)) and the ability to account for all 2020 landings and dead discards. In the last several years, total U.S. BFT landings have been below the total available U.S. quota such that the United States has carried forward the maximum amount of underharvest allowed by ICCAT from one year to the next. NMFS will need to account for 2020 landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations, and NMFS anticipates having sufficient quota to do that, even with this 51-mt transfer to the General category.

NMFS also considered the effects of the adjustment on the BFT stock and the effects of the transfer on accomplishing the objectives of the FMP (§ 635.27(a)(8)(v)) and

(vi)). This transfer would be consistent with the current U.S. quota, which was established and analyzed in the 2018 BFT quota final rule, and with objectives of the 2006 Consolidated HMS FMP and amendments, which include measures to meet obligations related to ending overfishing and rebuilding stocks (§ 635.27(a)(8)(v) and (vi)). Another principal consideration is the objective of providing opportunities to harvest the full annual U.S. BFT quota without exceeding it based on the goals of the 2006 Consolidated HMS FMP and amendments, including to achieve optimum yield on a continuing basis and to optimize the ability of all permit categories to harvest their full BFT quota allocations (related to § 635.27(a)(8)(x)). Specific to the General category, this includes providing opportunity equitably across all time periods.

NMFS also anticipates that some underharvest of the 2019 adjusted U.S. BFT quota will be carried forward to 2020 and placed in the Reserve category, in accordance with the regulations, later this year. This, in addition to the fact that any unused General category quota will roll forward to the next subperiod within the calendar year and NMFS' plan to actively manage the subquotas to avoid any exceedances, makes it likely that General category quota will remain available through the end of 2020 for December fishery participants. NMFS also may transfer unused quota from the Reserve or other categories, inseason, based on consideration of the determination criteria, as it did in 2019 (*i.e.*, transferred 60 mt from the Reserve category effective September 11, 2019 (84 FR 48566, September 16, 2019); 100 mt from the Reserve category effective October 1, 2019 (84 FR 52806, October 3, 2019); and 53.2 mt from the Reserve category effective November 18, 2019 (84 FR 63812, November 19, 2019)). NMFS anticipates that General

category participants in all areas and time periods will have opportunities to harvest the General category quota in 2020, through active inseason management measures, such as retention limit adjustments and/or the timing of quota transfers, as practicable (§ 635.27(a)(8)(viii)). Thus, this quota transfer would allow fishermen to take advantage of the availability of fish on the fishing grounds considering the expected increases in available 2020 quota later in the year, and provide a reasonable opportunity to harvest the full U.S. BFT quota, without precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota.

Based on the considerations above, NMFS is transferring 51 mt from the adjusted Reserve category to the General category for the January 2020 fishery, resulting in a subquota of 100 mt for the January 2020 fishery and 143 mt in the Reserve category.

### **Monitoring and Reporting**

NMFS will continue to monitor the BFT fishery closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Late reporting by dealers compromises NMFS' ability to timely implement actions such as quota and retention limit adjustment, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, General and HMS Charter/Headboat category vessel owners are required to report the catch of all BFT retained or discarded dead within 24 hours of the landing(s) or end of each trip, by accessing [hmspermits.noaa.gov](https://hmspermits.noaa.gov) or by using the HMS Catch Reporting app, or calling (888) 872-8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional action (*e.g.*, quota adjustment or closure) is necessary to ensure available subquotas are not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (978) 281-9260, or access [hmspermits.noaa.gov](http://hmspermits.noaa.gov), for updates on quota monitoring and inseason adjustments.

### **Classification**

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of and an opportunity for public comment on, the transfer from the Reserve category to the General category for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason quota transfers to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. These fisheries are currently underway and the fishery would be closed absent the additional quota. Affording prior notice and opportunity for public comment to implement the quota transfer is impracticable and contrary to the public interest as such a delay would result in exceedance of the General category January fishery subquota or earlier closure of the fishery while fish are available on the fishing grounds. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive



prior notice and the opportunity for public comment. For these reasons, there also is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under §§ 635.15(b) and 635.27(a)(4), (7), (8), and (9), and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: January 30, 2020.

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